IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

M/s. D.K. Traders & Anr. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 1072/2006
against the order dated 21-8-2004 passed
by the Chief Judicial Magistrate, Bikaner, in
Criminal Case No. 291/2005.

...

Date of Order: September 06, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioners have assailed the order dated 21-8-2004 passed by the Chief Judicial Magistrate, Bikaner (for short, "the trial Court" hereinafter) in Criminal Case No. 291/2005, whereby the trial Court framed charges against the petitioners for the offences under Sections 18(a) (i) , 18 (a) (vi), 18 (b) read with Section 16 (1) a, 17 (c) , 17 A (f) 17 B (d) read with Section 27 (a), 27 (d) of the Drugs and Cosmetics Act, 1940 (for short, "the Act" hereinafter). Aggrieved by the order impugned, the petitioners have filed the instant criminal miscellaneous petition.

I have heard learned counsel for the parties. Perused the order impugned as also the complaint filed by complainant Devendra Kumar Kedawat, Drugs Control Officer, Bikaner.

Learned counsel for the petitioners has confined his arguments to the extent of challenging the order impugned framing charge under Section 27 (a) and 27 (d) of the Act and contended that in whole of the complaint, it has no where been mentioned that the drug which was seized from the petitioners was said to be sub-standard, which when used by any peson for or in the diagonosis, treatment, mitigation, or prevention of any disease or disorder, is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 IPC solely on account of such drug being adulterated or spurious or not of standard quality.

I have carefully gone through the complaint fled by the Drugs Control Officer. In the complaint, it no where appears that Cetirizine, the drug which was seized from the petitioners, on being analyzed by the Chemist, was found to be of sub-standard when used by any person for or in the diagonosis, treatment, mitigation, or prevention of any disease of disorder is likely to cause his death or is likely to cause such harm on his body amounting to grievous hurt. The very essential ingredients of the offences under Section 27 (a) and 27 (d) of

the Act are not made out from the plain reading of the complaint and, therefore, the offences punishable under Sections 27 (a) and 27 (d) of the Act are prima facie not made out even if the evidence proposed to be produced by the complainant remains uncontroverted. In the circumstances, therefore, the trial Court fell in error in framing charges against the petitioners for the offences under Sections 27 (a) and 27 (d) of the Act. However, the charges framed by the trial Court for the remaining offences by the order impugned cannot be said to be erroneous.

Consequently, the criminal miscellaneous petition is partly allowed. The order dated 21-8-2004 passed by the trial Court in Criminal Case No. 291/2005, to the extent of framing charges against the petitioners for the offences under Sections 27(a) and 27 (d) of the Act, is set aside and the petitioners are discharged of the offences under Sections 27 (a) and 27 (d) of the Act.

(H.R. PANWAR), J.

mcs